**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 926/2006

SMT. JANKI DEVI
v
SANTOSH KUMAR

Date of Judgment: March 1, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Naveen Singhal for
Mr. L.L. Gupta for the appellant.
D.S. Jadaun for the respondent.

By Court:

The appellant, who was the original defendant in the suit, has filed this appeal challenging the Order dated 21.1.06 passed by the Addl. District Judge (Fast Track), Sawai Madhopur, whereby the learned Judge has granted a temporary injunction under Order 39, Rules 1 and 2 of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short) in favour of the plaintiff-respondent.

The brief facts of the case are that the plaintiff-respondent Santosh Kumar had filed a suit for specific performance of contract in relation to one shop. According to the plaint, the appellant owned and possessed two shops left by her husband. Out

of these two shops, one situated towards north side having three compartments, she sold to the respondent for a consideration of Rs. 1,20,000/-. On 29.1.99, with regard to the said shop, an agreement to sell was entered into and Rs. 80,000/- was paid by the respondent to the appellant. It was further agreed that the remaining amount of Rs. 40,000/- would be paid within six and half years. The respondent requested the appellant to execute the sale-deed on or before 25.1.05. However, the appellant ignored the said request. Thereafter, the respondent sent a notice to the appellant. However, the appellant replied to the said notice, but narrated incorrect facts. Along with the suit, the respondent also filed an application for temporary injunction under Order39, Rules 1 and 2 of the Code.

The appellant filed the written statement and denied the averments made in the plaint. According to her, her son, Radhey Shyam, borrowed Rs. 50,000/- from the respondent. For the said purpose she had placed her thumb impression on blank pieces of papers which have been used by respondent to fabricate the alleged agreement to sell. Moreover, before the expire of six and half years the question of executing the sale-deed does not even arise. Lastly, she claimed that since the agreement to sell was not executed on properly valued stamp papers, the same could not be read in evidence.

After hearing both the parties on the application of temporary injunction, vide order dated 21.1.06, the learned Judge allowed the application in favour of the respondent. Hence this appeal before this Court.

Mr. Naveen Singhal, the learned counsel for the appellant has vehemently argued that the appellant is an illiterate lady whose son had borrowed money from the respondent. In order to give security for the loan, the appellant had placed her thumb impression on blank stamp papers. These stamp papers have been used by the respondent for creating a forged agreement to sell. Secondly, the appellant is the owner of the shop and is in possession of the shop. Therefore, her right to alienate the property cannot be curtained till the respondent proves his case.

On the other hand, Mr. D.S. Jadaun, the learned counsel for the respondent, has strenuously argued that the appellant does admit that she had placed her thumb impression on the stamp papers. Secondly, by contending before the learned trial court that the question of getting the sale deed registered before the end of six and half years does not arise, the appellant admits that the agreement to sell was signed by her as contended by the respondent. Thirdly, the learned trial court has merely prohibited the appellant from selling or from transferring the disputed shop to a

third party. The learned Judge has passed the impugned order keeping in mind that creation of third party rights would lead to multiplicity of litigation. Fourthly, that since respondent has already paid Rs. 80,000/-, to deny him the possession of the shop would cause an irreparable loss to him. Lastly, that the issue whether the agreement to sell are admissible or not have to be decided during the course of the trial. The said issued cannot be decided at the initial stage of grant of temporary injunction. For, the valuation of the agreement is subject to the evidence adduced during the course of the trial. Hence he has supported the impugned order.

We have heard both the learned counsels and have examined the impugned order.

Granting of a temporary injunction in a case of disputed property is a delicate matter. The trial court has to do a balancing act, whereby they have to balance the conflicting interest of both the parties. However, until and unless the forged nature of document is proved by a party questioning the genuineness of the document, the document, prima facie, has to be accepted as genuine in nature. It is, indeed, a settled principle of law that while deciding a temporary injunction application, the trial court does not hold a mini-trial. Therefore, at the initial stage it cannot delve into the veracity and validity of a document. At the threshold, the document has to be

accepted as being genuine. In the present case, the appellant has not only admitted her thump impression on the stamp papers, but has also contended before the trial court that the question of getting the sale deed registered prior to the completion of six and half years does not arise. This contention of hers, prima facie, seems to strengthen the case of the respondent that the agreement to sell is a genuine one. Therefore, the first contention raised by the learned counsel for the appellant is without merit.

The second contention raised by the learned counsel for the appellant also does not deserve to be accepted. Although the appellant may be in possession of the disputed shop, she cannot be permitted to alienate the subject matter of the dispute during the course of the trial. For, such a transfer would make the subject matter of the dispute disappear. Secondly, it would create thirty party rights which would obviously lead to multiplicity of litigation. On one hand, the litigant should not be forced to file one litigation after the other. On the other hand, the judiciary, which is already overburdened with dockets, cannot afford the luxury of mushrooming of litigation.

In the case of Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass (AIR 2005 SC 104) the Hon'ble Supreme Court has said that where property is in dispute, generally a status-quo should

be maintained and the right to transfer the property should be curtained during the pendency of the case. Therefore, the learned Judge has validly passed the impugned order.

In the result, there is no force in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.